

## Department of the Army, DoD

## § 516.49

classified or otherwise privileged from release will be referred to Litigation Division. (See § 516.41(g).

### DA PERSONNEL AS WITNESSES IN PRIVATE LITIGATION

#### § 516.47 Response to subpoenas, orders, or requests for witnesses.

(a) *Policy.* The involvement of present or former DA personnel in private litigation is solely a personal matter between the witness and the requesting party, unless one or more of the following conditions apply:

(1) The testimony involves official information. (See appendix F—Glossary to this part).

(2) The witness is to testify as an expert.

(3) The absence of the witness from duty will seriously interfere with the accomplishment of a military mission.

(b) *Former DA personnel.* Former DA personnel may freely respond to requests for interviews and subpoenas except in instances involving official information (paragraph (a)(1) of this section) or concerning expert testimony prohibited by § 516.49. In those instances, the subject of the request or subpoena should take the action specified in §§ 516.41(c) and 516.42.

(c) *Present DA personnel.* Present DA personnel will refer all requests for interviews and subpoenas for testimony in private litigation through their supervisor to the appropriate SJA or legal adviser.

(d) *Discretion to testify.* Any individual not wishing to grant an interview or to testify concerning private litigation may seek the advice of an Army attorney concerning the consequences, if any, of refusal. Any individual not authorized to consult with Army counsel should consult with private counsel, at no expense to the government.

#### § 516.48 Official information.

(a) In instances involving § 516.47(a)(1), the matter will be referred to the SJA or legal adviser serving the organization of the individual whose testimony is requested, or to HQDA pursuant to § 516.47(a). The deciding official will determine whether to release the information sought under the principles established in § 516.44. If funding

by the United States is requested, see § 516.55(d).

(b) If the deciding official determines that the information may be released, the individual will be permitted to be interviewed, deposed, or to appear as a witness in court provided such interview or appearance is consistent with the requirements of §§ 516.49 and 516.50. (See, for example, figure G-2, appendix G, to this part). A JA or DA civilian attorney should be present during any interview or testimony to act as legal representative of the Army. If a question seeks information not previously authorized for release, the legal representative will advise the witness not to answer. If necessary to avoid release of the information, the legal representative will advise the witness to terminate the interview or deposition, or in the case of testimony in court, advise the judge that DOD directives and Army regulations preclude the witness from answering without HQDA approval. Every effort should be made, however, to substitute releasable information and to continue the interview or testimony.

#### § 516.49 Expert witnesses.

(a) *General rule.* Present DA personnel will not provide, with or without compensation, opinion or expert testimony either in private litigation or in litigation in which the United States has an interest for a party other than the United States. Former DA personnel will not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities either in private litigation or in litigation in which the United States has an interest for a party other than the United States. (See figure G-3, appendix G of this part). An SJA or legal adviser is authorized to deny a request for expert testimony, which decision may be appealed to Litigation Division.

(b) *Exception to the general prohibition.* If a requester can show exceptional need or unique circumstances, and the anticipated testimony will not be adverse to the interests of the United States, Litigation Division may grant special written authorization for present or former DA personnel to testify as expert or opinion witnesses at